

The IEI is amended by deleting Appendix 1, “Designation and Authorization of {Bank} as Financial Agent for General Lockbox Services” (DFA), in its entirety and replacing it with the following revised DFA, which is marked to show substantive changes from the original:

**Designation and Authorization of {Name of Bank}  
as Financial Agent  
for General Lockbox Services**

**THIS DESIGNATION AND AUTHORIZATION OF FINANCIAL AGENT (DFA)**, dated as of \_\_\_\_\_, 2003 (Effective Date), is entered into by the Financial Management Service (FMS), a bureau of the United States Department of the Treasury (Treasury), as Principal, and {Insert FA Name} (Financial Agent), as a Depositary and Financial Agent of the United States. This DFA sets forth the terms and conditions required of the Financial Agent for the establishment and performance of general lockbox services.

***Recitals***

In furtherance of its role in managing collection and disbursement mechanisms of the United States, FMS designates qualified financial institutions as depositaries and financial agents to act on behalf of the United States to perform essential banking services. In consideration of those services, FMS may compensate its financial agents for performing such duties.

FMS has determined that it is in the interests of the United States to designate the Financial Agent to serve as a financial agent for the essential banking services described herein.

The Financial Agent, in accordance with the terms and conditions stated herein, desires to serve as financial agent for the United States.

Therefore, in consideration of the representations, warranties and mutual promises and agreements set forth herein, the Financial Agent and FMS agree as follows:

**I. AUTHORITIES**

The parties acknowledge and agree that:

A. The Secretary of the Treasury has authority to designate financial institutions as depositaries and financial agents of the United States to perform essential banking services pursuant to 31 U.S.C. § 3303, 12 U.S.C. §§ 90 and 265 and other authorities. The Secretary of the Treasury has delegated to FMS the authority to select and designate depositaries and financial agents for, among other purposes, providing general lockbox services.

B. This DFA is not a Federal procurement contract, and is therefore not subject to the provisions of the Federal Property and Administrative Service Act (40 U.S.C. § 471

et seq.), the Competition in Contracting Act (41 U.S.C. § 251-260) or the Federal Acquisition Regulations (48 CFR Chapter 1).

## **II. DESIGNATION AND AUTHORIZATION**

Pursuant to 31 U.S.C. § 3303 and 12 U.S.C. §§ 90 and 265, and relying on the representations, warranties and promises contained herein, the Secretary of the Treasury, through FMS, hereby designates and authorizes the Financial Agent to act as depository and financial agent for general lockbox services, subject to the terms and conditions of this DFA, which set forth the scope of the agency. The scope of the Financial Agent's authority will be further defined in memoranda of understanding entered into by and among the Financial Agent, FMS and Federal agencies requiring lockbox services. (The term "MOU," as used herein, refers to such three-party agreements for performance of services pursuant to this DFA.) Additionally, FMS may, from time to time, issue instructional bulletins, consistent with this DFA, which further describe the scope of authority and financial agent responsibilities under this DFA. This DFA does not guarantee that the Financial Agent will be awarded any work pursuant to an MOU. The Financial Agent acknowledges that it will not be authorized to perform services until such an MOU becomes effective.

## **III. INCORPORATION BY REFERENCE**

The following, as from time to time amended, are incorporated herein by reference and given the same force and effect as though fully set forth herein:

- 31 CFR Part 202;
- Invitation for Expressions of Interest (IEI), Section 4.0, "Technical Requirements", including all amendments and modifications thereto (collectively referred to as the "Technical Requirements") (See Attachment A);
- The Pricing Schedule (See Attachment B);
- The Financial Agent's Response to the IEI, including its Certification Statement (See Attachment C);
- Volume V, Chapter 3000 of the Treasury Financial Manual (TFM) (V TFM Chapter 3000)<sup>1</sup> (See Attachment D);
- V TFM Chapter 2000, Supplement 1, governing CA\$HLINK Bank Management Reporting;
- V TFM Chapter 2000, Supplement 2, CA\$HLINK User's Guide;
- I TFM part 5, Chapter 4600.

---

<sup>1</sup> As of the Effective Date of this DFA, the Draft Chapter 3000 of Volume V of the TFM, attached hereto as Attachment D is incorporated by reference. Once the draft is finalized and published, the final, published Chapter 3000 shall be deemed incorporated by reference herein.

In the event of inconsistencies between this DFA, including any addenda or amendments hereto, and any documents incorporated by reference, the provisions of this DFA shall govern, to the extent it is consistent with Federal law.

#### **IV. REPRESENTATIONS AND WARRANTIES**

The Financial Agent hereby represents and warrants to FMS the following (which shall survive the execution and delivery of this DFA, the truth and accuracy of which are a continuing condition of FMS' obligations under this DFA):

A. The Financial Agent meets the class and eligibility requirements of a depository and financial agent of the Government as stated in 31 CFR Part 202.

B. The Financial Agent is not aware of any legal or financial impediments to performing its fiduciary responsibilities and obligations under this DFA, which it has not disclosed in writing to FMS.

C. Neither the Financial Agent, nor, to the best of the Financial Agent's knowledge, its contractors or representatives have offered or given a bribe or gratuity (including but not limited to entertainment and gifts) to an officer, official or employee of Treasury.

D. The Financial Agent has full corporate power and authority to enter into and execute and deliver this DFA and to carry out and perform its obligations hereunder.

E. This Financial Agent has duly and properly executed this DFA.

F. All information contained in any document the Financial Agent signed as part of the bid process for services performed pursuant to this DFA remain true and accurate, unless otherwise disclosed in writing to FMS.

#### **V. SERVICES TO BE PERFORMED BY AGENT**

A. Compliance with the Technical Requirements. The Financial Agent shall comply with all requirements, terms and conditions set forth for Qualified Lockbox Providers (QLPs) in the Technical Requirements and in any MOU. The Financial Agent shall be in compliance with all Security Requirements set forth in sections 4.10, 4.11 and 4.12 of the Technical Requirements thirty (30) calendar days prior to the date it is required to commence lockbox processing under any MOU. The Financial Agent acknowledges that the performance of obligations in the Technical Requirements and any MOUs is vital to the United States Treasury and the people of the United States.

B. 31 CFR Part 210. To Financial Agent warrants that it shall comply at all times with the provisions of 31 CFR Part 210, to the extent they are applicable to work performed pursuant to this DFA.

C. Fiduciary Responsibility. With respect to carrying out its fiduciary responsibilities under this DFA, the Financial Agent agrees to act at all times in the best interests of the United States. FMS may from time to time issue guidance, consistent with the terms of the DFA, regarding the Financial Agent's fiduciary responsibilities. The Financial Agent agrees to comply with this guidance to the same extent it complies with the terms of this DFA.

D. Financial Agent Contracts. The Financial Agent will use its own employees to carry out its obligations hereunder, except that the Financial Agent may hire other financial institutions or third parties as contractors to fulfill its obligations hereunder only in accordance with the requirements and limitations of the Technical Requirements Section [4.8](#), "Contractors". All work shall be performed under the supervision and control of the Financial Agent and its responsible employees. Contractors who are not designated as depositaries and financial agents under 31 CFR Part 202 shall not control or possess public funds at any time.

E. Status of Financial Agent Contractors. Any contractors hired by the Financial Agent for purposes of carrying out its obligations hereunder, shall not be contractors, subcontractors, or subagents of FMS. FMS shall not be deemed a party to any contract that the Financial Agent enters into with a third party (other than an MOU) in order to fulfill its obligations hereunder. FMS shall not be liable for any compensation due to any contractors used by the Financial Agent.

F. Information, Personnel and Physical Security. The Financial Agent shall ensure that the required level of information, personnel and physical security is provided and maintained in accordance with the requirements set forth in Section [4.10](#), [4.11](#) and [4.12](#) of the IEL, "Security Requirements", and all other documents incorporated by reference herein. In particular, the Financial Agent shall comply with the Computer Security Act of 1987 (Public Law 100-235) and all applicable standards and regulations established thereunder, as directed by FMS. Additionally, the Financial Agent shall not publish or disclose in any manner, without FMS' written consent, the details of any safeguards either designed or developed by the Financial Agent pursuant to this DFA or otherwise provided by FMS or other Federal agency. FMS must notify the Financial Agent in writing that it has met all security requirements prior to entering into an MOU or receiving any compensation hereunder. FMS may amend such requirements from time to time as necessary to protect the security, confidentiality and integrity of the Treasury's collection systems and data and to maintain compliance with all applicable laws and policies affecting lockbox collections.

G. Privacy Act.

1. The Financial Agent may be required to design, develop, operate or maintain a system of records on individuals or businesses to accomplish a government-required function that is subject to the Privacy Act of 1974 (5 U.S.C. § 552a), as amended (hereinafter, "the Act") and applicable Treasury regulations. Violations of the Act may involve the imposition of criminal penalties. Any information subject to the Act made

available to the Financial Agent (or any contractor performing services for the Financial Agent in connection with this DFA) shall only be used for the purpose of carrying out the provisions of this DFA and any MOU, and shall not otherwise be divulged or made known in any manner to any person except as may be required by law.

2. The Financial Agent shall inform its officers and employees (and any contractor officers and employees) to whom information is or may be disclosed of the penalties imposed under the Act for improper disclosure of information. For example, 5 U.S.C. § 552a(i)(1), which is made applicable to the Financial Agent by 5 U.S.C. § 552a(m), provides that any officer or employee of the Financial Agent who, by his /her employment or official position, has possession of, or access to, agency records, the disclosure of which is prohibited by the Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

3. The Financial Agent shall train all officers and employees (and any contractor officers and employees) on the duties and responsibilities imposed on them and the rights conferred on individuals by the Act and Treasury regulations. The Financial Agent shall certify, in writing, that all employees and contractor employees (or any future employees) have received this training before they begin any tasks under which they may gain access to any information subject to the Act. A certification form for all training provided in support of this task order shall be signed by each Financial Agent employee and contractor employee and maintained on file by the Financial Agent. The Financial Agent shall make these certifications available for reasonable review by FMS (or other Treasury Department) personnel. The Financial Agent shall ensure that information concerning the Act's requirements is posted in appropriate places (including computer systems/databases) to continually remind employees and contractor employees of their responsibilities under the Act.

H. Right to Examine and Audit. FMS, the Treasury Inspector General's Office, and the General Accounting Office shall have the right to conduct announced or unannounced, on-site security reviews and audits of the Financial Agent's (and any contractor's) facilities, operations, books and records related to the Financial Agent's performance hereunder. Federal agencies for which the Financial Agent is performing lockbox services shall also have the right to conduct such reviews and audits.

I. Access to Systems. To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of data, the Financial Agent shall afford FMS, its agents and contractors access to the Financial Agent's facilities, installations, technical capabilities, operations, documentation, records, and databases. If new or unanticipated threats or hazards are discovered by either FMS or the Financial Agent, or if existing safeguards have ceased to function, the party discovering such problem shall immediately bring the situation to the attention of the other party. If the Financial Agent requests that any FMS contractor assisting FMS in the performance of an inspection sign a confidentiality agreement, FMS

shall require the contractor to sign the confidentiality agreement attached as Attachment E hereto. The Financial Agent shall afford the contractor access if such confidentiality agreement is signed.

J. Continuity of Services. The Financial Agent recognizes that the services provided under this DFA are vital to the U.S. Treasury and must be continued without interruption, and that, upon the expiration or termination of this DFA, FMS may designate another Financial Agent to provide the services required hereunder. Upon expiration of this DFA, the Financial Agent shall, unless otherwise directed in writing by FMS, provide all transition services specified in Section 4.9.4 of the Technical Requirements.

K. Marketing. The Financial Agent understands and acknowledges that it is designated for the purpose of providing lockbox services only. This DFA does not designate or authorize the Financial Agent to provide any other depositary, cash management, or financial management service. The Financial Agent shall not market any other financial services to Federal agencies without the prior written consent of FMS to expand the scope of designation.

L. Records Retention. The Financial Agent shall retain all records in accordance with sections 4.9.5, 4.10 and 4.11 of the Technical Requirements.

## **VI. COMPLIANCE WITH APPLICABLE LAWS**

The Financial Agent shall, at all times, be in compliance with all Federal, State and local laws applicable to its performance under this DFA.

## **VII. PRICING AND COMPENSATION**

A. Method of Compensation. FMS will compensate the Financial Agent for services provided under this DFA in such method or methods as FMS deems appropriate in its sole discretion. The methods of compensation include, but are not limited to, compensating balances, direct payment, and Depositary Compensation Securities as offered and described in 31 CFR Part 348, or any other method upon which FMS and the Financial Agent mutually agree. Depositary Compensation Securities will work as follows: FMS will place a balance in a non-interest bearing time account with the Financial Agent which will be used to purchase Depositary Compensation Securities in amounts determined by FMS. The Financial Agent will be compensated for the services provided pursuant to this DFA by the interest earned on the Depositary Compensation Securities, which will be payable monthly. The principal amount of the Depositary Compensation Securities may be adjusted periodically to equate earnings with allowable compensation. The placing of the balance and the purchase of the Depositary Compensation Securities will occur in a single transaction and will be made in consideration of each other and the time balance account will mature on the same date as

the security. Each party to the Depositary Compensation Security transaction (FMS and the Financial Agent) has the legally enforceable right to set off the amount owed to the other party with the amount owed by the other party. At maturity, the Depositary Compensation Security and the time account will be set off and net settled. The Depositary Compensation Securities will qualify as collateral for the time balance and cannot be pledged or used for any other purpose. Depositary Compensation Securities may not be redeemed prior to maturity unless approved by FMS. In the event FMS elects to compensate the Financial Agent through the use of Depositary Compensation Securities, each party agrees to perform all of its obligations with respect to each transaction, and failure to perform with respect to any obligation shall constitute a failure to perform with respect to all transactions. All payments and other transfers made by either party with respect to any transaction shall be deemed to have been made in consideration of payments and other transfers with respect to any other transaction.

B. Pricing. The amount of compensation for all charges shall be determined in accordance with the Pricing Schedule attached hereto as Attachment B.

C. Option Period Pricing. If FMS exercises options under Article XXI herein, the Financial Agent may request an adjustment in pricing in accordance with IEI section 3.4.4.

D. Compensation for Transition Services. The Financial Agent will be compensated for all transition services in accordance with Section 4.9.4 of the Technical Requirements.

E. Compensation After Termination. If this DFA is terminated pursuant to Articles XI or XVII, the Financial Agent shall be compensated only for services received and accepted by FMS prior to the effective date of termination. The Financial Agent shall not be compensated for lost profits or business opportunities the Financial Agent would have expected after the expiration of the term in which this DFA is terminated.

F. FMS Execution of MOU Required For Compensation. FMS must be a party to any and all MOUs entered into pursuant to this DFA. The Financial Agent will not be compensated for any services performed pursuant to any agreement to which FMS is not a party.

## **VIII. TRANSFER OF AGREEMENT**

A. Transfer or Assignment Prohibited. The transfer or assignment of this DFA by sale, operation of law, or other means, is prohibited and shall be considered a Default pursuant to Article X, paragraph A, unless the conditions of the following paragraph B are met.

B. Surviving Entity in a Merger or Acquisition. The transfer shall not be considered a Default if:



1. The successor financial institution's (SFI) interest arises out of the transfer of all the Financial Agent's assets or the entire portion of the assets involved in performing this DFA. (Examples include, but are not limited to, sales of these assets with a provision for assuming and transfer of these assets incident to a merger or corporate consolidation);

2. The SFI meets the class and eligibility requirements of a Depositary and Financial Agent under 31 CFR Part 202; and

3. The conditions of Article IX "Mergers and Consolidation" are met.

C. Written Acceptance Required. No SFI shall be considered acceptable to FMS to act as the Financial Agent under this DFA unless FMS expressly sets forth its acceptance in writing to the SFI. Notwithstanding paragraph B above, if FMS, in its sole discretion, determines that it is not in the best interests of the United States to accept the SFI, then FMS may terminate this DFA, pursuant to Article XVII herein.

D. SFI Bound by DFA. If FMS allows assignment of this DFA to the SFI, the SFI shall assume all obligations, liabilities and responsibilities and meet all conditions required of the Financial Agent under this DFA and shall continue operations and performance without interruption, unless otherwise directed in writing by FMS. In the event of a default under this Article X, the SFI shall remain obligated to perform pursuant to this DFA, unless FMS sends written notice that it intends to terminate this DFA pursuant to Article XI.

E. Cooperation of SFI. If the SFI is not acceptable to FMS, the Financial Agent (or the SFI, as applicable) agrees to cooperate and act in good faith in assisting FMS to ensure the smooth transition of lockbox processing to the selected Financial Agent. All terms and conditions identified under Article V, paragraph J, "Continuity of Services," shall apply.

## **IX. MERGER AND CONSOLIDATION**

A. Prior Written Notice to FMS. The Financial Agent shall give written notice to FMS prior to the sale of the assets involved in the performance of this DFA or the merger or consolidation of the Financial Agent with another entity. Notice shall be delivered simultaneously with notice to Federal banking regulators and prior to such action becoming public knowledge, consistent with Federal laws and regulations. FMS agrees to keep all such information confidential.

B. Documents Relating to the Transaction. In the case of a merger or consolidation involving the Financial Agent, promptly upon FMS' request, the Financial Agent, or its SFI, shall furnish, or cause to be furnished to FMS, true, correct and complete copies of all agreements, documents and instruments relating to such merger or

consolidation, including, but not limited to, the certificate or certificates of merger or consolidation as filed with each appropriate Secretary of State and any documents required to be filed with any State or Federal regulatory agencies having authority over the Financial Agent's operations.

C. Documents of Surviving Entity. FMS shall have the right to examine documents of the surviving entity that FMS deems germane to this DFA to determine whether FMS finds it to be an acceptable successor under this DFA.

D. Confirmation of Obligations. The SFI shall, immediately upon the effectiveness of the merger or consolidation, expressly confirm in writing, its obligation to perform hereunder.

## **X. DEFAULTS**

The following constitute defaults under this DFA:

A. Non-performance. The Financial Agent fails to duly perform or comply with any of the obligations or conditions contained in this DFA (including, but not limited to, any and all terms incorporated by reference herein or any MOU), and, if applicable, such failure continues beyond any time period granted to cure such failure.

B. Loss to U.S. Treasury. Any negligent, willful or reckless act of the Financial Agent or its contractors that results in a loss to the U.S. Treasury.

C. Breach of Fiduciary Duty. The Financial Agent breaches its fiduciary duty to the United States with respect to its agent responsibilities.

D. Misrepresentation. Any representation made herein or provided to FMS pursuant to the IEI was materially false, incorrect, or incomplete when made.

E. Insolvency. The Financial Agent becomes insolvent or generally fails to pay, or admits its inability to pay, debts as they become due or makes a general assignment for the benefit of any of its creditors.

F. Bankruptcy Proceedings. Any bankruptcy, reorganization, liquidation, dissolution or other case and proceeding under any bankruptcy or insolvency law is commenced in respect of the Financial Agent.

G. Appointment of Receiver. A receiver, trustee, conservator or other custodian is appointed for any of the property of the Financial Agent.

## **XI. REMEDIES FOR DEFAULT**

A. FMS Actions. FMS may take any or all of the following actions in the event of a default, as described in Article X "Defaults" above:

1. Terminate This DFA. FMS may revoke, in whole or in part, this DFA and cease its performance hereunder. If this DFA is terminated, the designation and authorization of the Financial Agent as financial agent for purposes of general lockbox services under this DFA is automatically revoked. If FMS terminates this DFA, the Financial Agent shall cease all operations hereunder (including all services performed pursuant to any MOUs) as of the effective date of termination stated in the notification of termination. The Financial Agent shall remain obligated to comply with Article V, paragraph J, "Continuity of Services" herein.

2. Terminate an MOU. FMS may terminate one or more MOUs, which FMS, in its sole discretion, determines should be terminated, based upon the nature of the Financial Agent's default.

3. Revoke Financial Agent Status. FMS may revoke the Financial Agent's designation as a depository and financial agent for the United States pursuant to 31 CFR Part 202. This DFA and any other agreement with the Treasury requiring status as a depository and financial agent shall be deemed terminated as of the effective date of such revocation.

4. Probation. FMS may place the Financial Agent in probationary status while assessing the desirability of allowing the Financial Agent to continue to perform essential banking services for FMS under this DFA or any other agreement with FMS. During such probationary time, the Financial Agent may not bid on additional FMS services.

5. Future Work as Financial Agent. FMS may factor information regarding any default hereunder when making any decisions regarding future use of the Financial Agent for performance of financial agent services, including, but not limited to, using such information in the award of work pursuant to an invitation for expressions of interest or other bid process.

6. Liquidate Collateral. FMS may liquidate collateral pledged pursuant to 31 CFR 202.6.

7. Determine Method of Compensation. If any default should cause a loss to the United States Treasury, FMS may, in its sole discretion, determine the means of compensating the Treasury for such loss in accordance with Article XII, paragraph E herein.

B. Optional Notice and Opportunity to Cure. Prior to taking action under this Article XI, FMS may, but is not obligated to, give the Financial Agent up to 30 calendar days from the date of notification to propose, in writing, a plan and timetable to resolve

any deficiencies. The Financial Agent expressly acknowledges that FMS is under no obligation in any case to give the Financial Agent an opportunity to resolve the deficiencies before taking action under this Article XI. To the extent that FMS, in its sole discretion, does give the Financial Agent the opportunity to propose a plan and timetable to resolve the deficiencies, the sufficiency of such plan and timetable will be determined by FMS, in its sole discretion. If FMS makes the determination that the proposed plan and timetable to resolve the deficiencies are insufficient, FMS may take any action under this Article XI that FMS deems necessary or advisable.

C. Financial Agent's Obligations When DFA is Revoked. When the Financial Agent's status as a depository and financial agent for DFA services is revoked, it shall provide transition services as required and specified under Article V, paragraph J, "Continuity of Services," herein.

## **XII. FINANCIAL AGENT LIABILITY**

A. Liability. The Financial Agent shall fully reimburse the Government for any public funds lost as a result of a breach of this DFA. In addition, the Financial Agent shall reimburse the Government for its costs and expenses associated with any such breach. The method of determining and recovering these costs will be at the sole discretion of FMS. The Financial Agent expressly assumes liability for the negligence, recklessness, and/or willful misconduct of its officers, employees, agents, contractors and temporary employees. In the event that a third party brings a claim against the Financial Agent for actions it has taken contrary to, or outside the scope of, this DFA, the Financial Agent may not bring a claim, in any form or at any time, against Treasury, its employees, or officers for the cost or liabilities incurred by the Financial Agent defending or paying any such claim.

B. Delay of Funds Availability. If any act on the part of the Financial Agent (including its contractors) results in a delay of funds availability, or other loss to the U.S. Treasury, the Financial Agent shall fully reimburse the U.S. Treasury for the amount of such loss. The liability for delays in funds availability equals the time "Value of Funds" as more fully described in Volume V of the Treasury Financial Manual. Notwithstanding the foregoing, the Financial Agent will not be liable for the time Value of Funds on the amount delayed or any excess costs if: (a) the funds transfer delay or failure to perform arises out of acts of God (e.g. fires, floods, epidemics, quarantine restrictions, and unusually severe weather), the public enemy, the U.S. Government in either its sovereign or contractual capacity, or strikes or freight embargoes; (b) the Financial Agent (or any of its contractors) did not have use of the funds delayed or did not realize unjust enrichment; and (c) the Financial Agent (or its contractors) could not have prevented the delay of funds availability, or other loss to the U.S. Treasury, by obtaining required services from other sources in sufficient time to prevent or avoid such delay or loss.

C. Costs Incurred for Obtaining Other Services. Revocation of the Financial Agent's status as a depository and financial agent pursuant to the Financial Agent's

default under this DFA may require FMS to obtain other services similar to those required under this DFA. The Financial Agent shall be liable to FMS for its reasonable costs incurred obtaining such substitute services.

D. Method of Collecting Reimbursement. After the formal Disputes process set forth in section 4.9.3 of the Technical Requirements has been completed, FMS will, in its sole discretion, determine the method to make the party who lost value whole. The preferred method of collection is by means of an adjustment to the Financial Agent's compensating balance Treasury Time Balance (TTB) account cumulative position. However, FMS has the discretion to collect any monies due to FMS from the Financial Agent by means of a direct payment to the Treasury's General Account at an FRB. The methods of direct payment from the Financial Agent include, but are not limited to, an ACH debit, receipt of a hard dollar payment, a charge against the Financial Agent's reserve account at the FRB, and a liquidation of collateral pledged to secure deposits of public money. In the event that FMS directly bills the Financial Agent, the Financial Agent shall remit the amount set forth in the Value of Funds Assessment decision. If the Financial Agent fails to pay such amount within the time specified, the Financial Agent shall be held liable for interest, penalties, and administrative costs in accordance with the authorities codified at 31 U.S.C. § 3717 and 31 CFR Parts 5 and 900-904.

### **XIII. REPAYMENT OF EXCESS FUNDS TRANSFERRED TO TREASURY**

In the event excess funds are transferred from the Financial Agent, FMS will be liable to the Financial Agent for the time Value of Funds of the excess so transferred, less any expenses incurred by FMS. FMS will not charge expenses if the transfer was directed by FMS.

### **XIV. NO WAIVER**

Failure on the part of FMS to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver of such terms, covenants and conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times. No waiver shall be valid unless in writing and signed by an authorized officer of FMS. No failure to exercise and no delay in exercising, on the part of FMS, any right, remedy, power or privilege, hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exhaustive of any rights, remedies, powers and privileges provided by law.

## **XV. RIGHTS TO SOFTWARE, DATA AND RECORDS**

### **A. Rights to Program Software and Business Methods.**

1. Software Developed in Connection with this DFA. FMS shall have non-exclusive, unlimited rights to software source and object code developed in connection with the Financial Agent's obligations under the DFA. "Unlimited rights" means FMS may use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

2. Other Software. With regard to any commercial off-the-shelf software that is necessary to operate any general lockbox services pursuant to this DFA, the Financial Agent shall ensure that FMS has limited rights only to the extent such rights are consistent with the standard licensing agreement for such software. "Limited rights" means that FMS may: (a) use, or copy the software for use in or with the computer or computers accessing the data or services provided under this DFA; (b) reproduce the software for safekeeping or backup purposes; (c) modify, adapt, or combine the software with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same limited rights.

3. Ideas, Concepts, Design and Business Methods. FMS shall have non-exclusive, unlimited rights in the ideas, concepts, design, and business methods developed for performance of lockbox services pursuant to this DFA. Immediately upon termination or expiration of this DFA, the Financial Agent shall provide the databases, output formats and software used in the performance of its obligations hereunder.

4. The Financial Agent shall not charge any other agency or instrumentality of the United States for any intellectual property to which FMS has obtained unlimited rights pursuant to this Article XV.

B. Rights to Data and Records. Any records (including, but not limited to, working papers and design documents) and data supplied to the Financial Agent by FMS, or collected by the Financial Agent in performance of this DFA, shall remain the exclusive property of FMS. The Financial Agent shall not use, copy, or distribute such data or records in any manner except as necessary for carrying out its responsibilities under this DFA. Such data includes, but is not limited to, names, addresses and other information about individuals and businesses making payments to, or receiving payments from, the U.S. Treasury and software which FMS supplies to the Financial Agent in connection with this DFA. (See Article V, paragraph G of this DFA regarding Privacy Act requirements.

## **XVI. DISPUTES**

A. General. The parties agree that it is in their mutual interest to resolve disputes by agreement. If a dispute arises from the implementation or administration of this DFA, the parties will make all reasonable efforts to resolve the dispute by mutual agreement.

B. Formal Dispute. If the dispute cannot be resolved informally by mutual agreement, the dispute shall be resolved pursuant to Technical Requirements section 4.9.3. The Financial Agent shall exhaust this administrative remedy prior to commencing legal proceedings.

C. Obligation to Continue Performance. The Financial Agent shall proceed diligently with performance of the services required by the DFA pending final resolution of any dispute.

D. Other Remedies. FMS and the Financial Agent have the right to pursue any and all available legal or equitable rights they may have notwithstanding any written decision that results from the formal dispute process.

## **XVII. BEST INTERESTS OF THE UNITED STATES.**

A. FMS Actions. The Financial Agent acknowledges that the United States must have complete control of public monies at all times. Therefore, notwithstanding any other provisions of this DFA, when FMS, in its sole discretion, determines such actions are necessary to protect the interests of the United States, FMS may take the following actions even in the absence of any of the conditions set forth in Article X "Defaults":

1. Terminate this DFA with 30 days written notice.
2. Revoke the Financial Agent's status as a depository and financial agent.
3. Recall immediately any compensating balances placed with the Financial Agent.
4. Call immediately any deposit securities prior to their stated maturity.

If practicable, FMS will give the Financial Agent up to fourteen (14) calendar days notice before recalling the compensating balances and deposit securities referenced in clauses 3 and 4 above; however, FMS reserves the right in all cases to recall such balances and securities immediately by providing only one (1) calendar day notice to the Financial Agent.

B. Transition. If FMS terminates the DFA pursuant to this Article XVII, FMS may designate another financial institution to provide the services required hereunder. In such instance, the Financial Agent shall, unless otherwise directed in writing by FMS, provide the all transition services specified in the Technical Requirements.

## **XVIII. MODIFICATIONS**

A. FMS' Right to Modify. FMS may, in its sole discretion, modify, add to, or amend the general scope of, and terms and conditions for providing, required services under this DFA, including incorporated documents and requirements, by providing written notice to the Financial Agent.

B. Adjustment to Compensation. If any such modification, addition, or amendment causes an increase or decrease in the cost of, or the time required for, performance of any service required by this DFA, FMS will make an equitable adjustment in the service price or other terms of performance, or both, and this DFA and any applicable MOU shall be modified accordingly. If the Financial Agent realizes a savings in the cost of required services as a result of the new procedures, operations, or changes such savings shall be reflected in a downward adjustment to the DFA Price Schedule.

C. Financial Agent Duty to Notify.

1. Change in Cost of Services. If the Financial Agent regards any communication from FMS to be a modification of the services required under this DFA, the Financial Agent shall notify FMS, in writing, within 30 calendar days from the date that the Financial Agent receives such communication. The Financial Agent must notify FMS if it realizes a cost savings. Notwithstanding the preceding paragraph B, FMS will bear no obligation to compensate the Financial Agent for any additional costs, unless such notice is timely received. If the parties fail to agree to any adjustment in price, FMS shall treat the request for a price adjustment as a dispute, and it will be settled in accordance with section 4.9.3 of the Technical Requirements.

2. Software or Hardware Modifications. If any modification, addition, or amendment, or other change requires software or hardware modification, the Financial Agent shall provide FMS with written notification at least 30 calendar days prior to the Financial Agent authorizing any work. If FMS approves of the modification work, in writing, the Financial Agent shall place an order for programming or equipment with the vendor of its choice within 30 calendar days of FMS' notice of approval.

## **XIX. PROVISION OF DATA**

Prior to the expiration of this DFA, FMS may solicit financial institutions to function as depositaries and financial agent for general lockbox services. The Financial Agent shall provide essential activity data and other information upon request. The Financial Agent may be required to provide data to an independent firm to conduct a nationwide mail study. The Financial Agent shall fully cooperate in all data-gathering activities at no cost to FMS.

## **XX. INITIAL TERM OF FINANCIAL AGENT AGREEMENT**



This DFA shall become effective as of the Effective Date, and shall remain in effect for three (3) years (Initial Term), unless earlier terminated pursuant to Articles XI, "Remedies for Default," or XVII, "Best Interests of the United States," herein.

## **XXI. FMS OPTIONS TO RENEW**

A. FMS Options. FMS, in its sole discretion, shall have two (2) successive options to renew this DFA for a period of two (2) years each (Renewal Periods), which FMS shall exercise by giving written notice at least thirty (30) calendar days prior to the expiration of the Initial Term or the applicable Renewal Period. In the event FMS chooses to exercise an option to renew, all requirements, terms and conditions identified in this DFA and incorporated documents shall be effective for the Renewal Period, unless otherwise modified by FMS. The pricing of services for any renewal period are set forth in Section [3.4.4 of the IEI](#).

B. Extension Beyond Renewal Periods. Notwithstanding any provision herein to the contrary, FMS shall have the right to extend the term of this DFA beyond the expiration date of the last Renewal Period, if FMS determines that it is in the best interests of the United States to do so. FMS shall exercise this right by giving the Financial Agent written notice at least 60 calendar days prior to the expiration of the current term of this DFA. In the event this right of extension is exercised by FMS, all requirements, terms and conditions identified in this DFA, including incorporated documents and requirements, shall be effective for the term of the extension, unless otherwise modified by FMS. The pricing of services for the extension period shall be as set forth in IEI section 3.4.4.

C. Pricing Disputes. Any failure to reach an agreement on a proposed price adjustment shall be resolved pursuant to the Disputes process set forth in Section 4.9.3 of the Technical Requirements.

## **XXII. NOTICES**

All notices required to be given herein shall be given to the following contacts unless expressly stated otherwise herein:

To FMS (other than the ATO):  
Director, Financial Services Division  
Financial Management Service  
401 14<sup>th</sup> Street, SW  
Washington, DC 20227

To the FMS ATO:  
Director, Cash Management Directorate  
Financial Management Service

401 14<sup>th</sup> Street, SW  
Washington, DC 20227

To the Financial Agent:  
[Contact Title/Office Information]

### **XXIII. MISCELLANEOUS**

A. Counterparts. This DFA may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

B. Third-Party Beneficiaries. This DFA will inure to the benefit of and be binding upon the parties hereto. No other person will have any right or obligation hereunder, except for Successor Financial Agents as described in Article VIII herein.

C. Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

D. Officials Not to Benefit. No member of, or delegate to, Congress, or resident commissioner, or other U.S. Government official, shall be permitted to share in any part of this DFA, or to receive any benefit arising from it.

E. Gratuities. The Financial Agent, its contractors or representatives shall not offer or give a gratuity (including but not limited to entertainment and gifts) to an officer, official or employee of FMS or other bureau or unit of the Treasury Department.

F. Federal Law Applies. The parties agree that this DFA agreement will be interpreted under Federal law, but not under the Federal Acquisition Regulation, since it is not a procurement subject to the Federal Property and Administrative Service Act (41 U.S.C. §§ 251-260). In the absence of applicable Federal law, this DFA shall be interpreted pursuant to the laws of the State of New York, without regard to its principles of conflict of laws

G. FMS Not Liable for Acts Exceeding the Scope of Authority. FMS will not be liable for any actions taken by the Financial Agent, which are outside of the scope of authority contained in this DFA.

H. Binding Effect of Agreement. This DFA shall be binding upon the Financial Agent and its successors and assigns.

### **XXIV. DEFINITIONS**

Terms that are not defined herein are defined in Volume V, Chapter 3000, of the TFM.

### **Acceptance of Terms and Commitment**

The signing of this document by authorized officials forms a binding commitment between FMS and the designated Financial Agent. The parties are obligated to perform in accordance with the terms and conditions of this document, any properly executed modification, addition, or amendment thereto, any Attachment thereto, and any documents and requirements incorporated by reference.

By their signing, the signatories represent and certify that they possess the authority to bind their respective organizations to the terms of this document, and hereby do so.

IN WITNESS WHEREOF, the Financial Agent and FMS by the following officials sign their names to enter into this DFA.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director, Financial Services Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Financial Agent Authorized Bank Official/Title

#### **Attachments:**

Attachment A: Invitation for Expressions of Interest (IEI), Section 4.0, "Technical Requirements", including all amendments and modifications thereto

Attachment B: Pricing Schedule

Attachment C: The Financial Agent's Response to the IEI, including its Certification Statement

Attachment D: Draft Volume V, Chapter 3000 of the Treasury Financial Manual

Attachment E: FMS Form Confidentiality Agreement